

MAY 18 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ENRIQUETA CRUZ; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74349

Agency Nos. A95-451-465
A95-451-466
A95-451-467

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 15, 2006 **

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Enriqueta Cruz, and her children, Nathalie Guerra Cruz and Arely Yazmin Guerra Cruz, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reconsider

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the dismissal of their appeal from an immigration judge's ("IJ") order denying their applications for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo constitutional challenges, *Tovar-Landin v. Ashcroft*, 361 F.3d 1164, 1166 (9th Cir. 2004), and review for abuse of discretion the denial of a motion to reconsider, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004). We deny in part and dismiss in part the petition for review.

Petitioners' equal protection challenge to the Nicaraguan Adjustment and Central American Relief Act ("NACARA") is foreclosed by *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 602-03 (9th Cir. 2002) (rejecting equal protection challenge to NACARA's favorable treatment of aliens from some countries, over those from other countries, including Mexico).

The BIA acted within its discretion in denying Petitioners' motion to reconsider because the motion failed to set forth any error of fact or law in its decision affirming the IJ's order denying cancellation of removal on the ground that Petitioners have no qualifying relatives. *See* 8 C.F.R. § 1003.2(b)(1); *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1180 n.2 (9th Cir. 2001) (en banc).

Because the instant petition for review is not timely as to the BIA's underlying order issued on June 3, 2004, we lack jurisdiction to consider

Petitioners' challenge to that order. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1258 (9th Cir. 1996).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.